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Donald Evans
Director
Regulatory Affairs

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 2, 1993

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Dear Mr. Caton:

Re: RM-8303

Enclosed for filing are the original and eleven copies of MCI's comments in the above captioned proceeding. Please affix a proper notation to mark as received for filing.

Yours truly,

Donald F. Evans

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)

R.M.-8303

Petition for Rulemaking to)
Determine the Terms and Conditions)
Under Which Tier 1 LECs Should)
Be Permitted to Provide InterLATA)
Telecommunications Services)
)

**OPPOSITION OF MCI TELECOMMUNICATIONS CORPORATION
TO PETITION FOR RULEMAKING**

MCI Telecommunications Corporation ("MCI") opposes the petition of the Bell Companies for a rulemaking to determine whether it is now in the public interest for them to provide, on any terms and conditions, interexchange telephone service.

Whether Bell provision of interexchange service is in the public interest depends on whether it would be procompetitive or anticompetitive. The Commission's authority to consider the competition policy underlying the antitrust laws is well-established. E.g., FCC v. RCA Communications, Inc., 346 U.S. 86, 94 (1953). Here, particularly because the stated rationale of the proposed policy is to increase competition in the interexchange market, the Commission could not reasonably conclude that Bell entry would further the public interest if it in fact reduced competition in this market.

If allowed to become competitors in the interexchange market, the Bell Companies will, for the foreseeable future,

have the ability to act on their incentive to impede competition in the interexchange market. The predicate of the petition is that the Bell Companies face meaningful competition in their ubiquitous local exchange markets.¹ In opposing the recent request of one of the Bell Companies for interexchange and other relief, MCI demonstrated that competition for local exchange services remains limited and that barriers to effective entry are likely to endure for the foreseeable future.²

As a result, interexchange customers and carriers must continue to rely on the Bell Companies for fair and nondiscriminatory access to each other. Bell Companies determine whether they will provide the evolving kinds of interconnections that interexchange carriers need for the more powerful and flexible services demanded by their customers. If Bell Companies compete in the interexchange market and therefore have the incentive to provide the interexchange affiliates with the access they want and to deny interexchange competitors the access they need, the Bell Companies will acquire the power to control price and impede competition. As the Commission has found, increasingly effective competition has emerged in the

¹ Petition, at 14-25.

² MCI Comments, at 20-26, In the Matter of a Petition for A Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, DA 93-481 (filed June 11, 1993).

interexchange market since divestiture, benefitting consumers with lower prices, higher quality, and innovative services. Bell entry would reduce competition and threaten re-establishment of the stagnant, overpriced Bell System monopoly ended only by divestiture.

The notion that regulation can effectively prevent Bell bottleneck abuse is fanciful. Widespread discrimination and cross-subsidy are already a matter of record before the Commission.³ Equal access is not the static concept suggested by the Bell Companies,⁴ and the dramatic rate of change of access arrangements and needs precludes regulators from controlling the myriad, evolving ways in which the Bell Companies can deny equal treatment. The alleged safeguards against cross-subsidy have not worked and will not work.⁵

At bottom, the Bell Companies rely on past Commission's long-standing hostility to the line of business restrictions.⁶ The Commission's earlier comments concerning the impact of these restrictions were made

³ MCI Reply Comments, at 11-13, In the Matter of a Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, DA 93-481 (filed July 12, 1993).

⁴ Petition at 28-29.

⁵ The General Accounting Office recently found that the Commission does not have the resources to enforce its accounting rules.

⁶ Petition at 1-2, 4, 5-6, 10, 39-40, 41.

without the benefit of any attempt to solicit the views of interexchange consumers and competitors. Although any thorough and impartial review of the matter would confirm the continuing wisdom of the interexchange restriction. The FCC cannot simply prejudge the issue.

It is not accurate that the D.C. Circuit has indicated that removal of the interexchange restriction would automatically occur as soon as the FCC promulgates regulations.⁷ To be sure, the D.C. Circuit noted that no plausible argument for lifting that restriction could be made until the FCC adopted new regulations directly addressing the competitive dangers of Bell long-distance service. United States v. Western Electric Co., 900 F.2d 283, 301 (D.C. Cir.), cert. denied, 111 S. Ct. 283 (1990). However, the Court of Appeals stressed that the district court must decide whether federal (and state) regulation can effectively prevent bottleneck abuse:

The district court below . . . was obliged to determine ultimately whether the FCC's regulations would effectively prevent the BOCs from using their monopoly power to impede competition in the markets they sought to enter. . . . The very premise of this case was that the FCC could not effectively control AT&T. We think it would therefore be an abdication of judicial responsibility for the district court to assume that the FCC's regulations would be effective merely because they had not been found to be arbitrary and capricious.

⁷ Petition at 2.

900 F.2d at 298 (emphasis in original). The D.C. Circuit also noted that speculative assessments of the efficacy of untested regulations cannot support any determination that the risk of bottleneck abuse has been controlled. 900 F.2d at 298, 301, 302 nn. 20-21.

The fundamental regulatory task facing the Commission is to develop and implement a systematic, coherent regulatory framework to manage the transition from niche entry to effective local exchange competition.⁸ The Commission has not started that task. Until that task has been completed, and until effective local exchange competition is in fact established, Bell provision of interexchange services will continue to be contrary to the public interest. The commission should use its limited resources where they are needed, not on the pointless excursion on which the Bell Companies ask the Commission to embark.


⁸ MCI Comments, at 3-4, In the Matter of a Petition for A Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, DA 93-481 (filed June 11, 1993).

For the foregoing reasons, the Commission should deny the Bell Companies' petition.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

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Dated: September 2, 1993

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on this second day of September 1993.

A handwritten signature in dark ink, appearing to read 'Donald F. Evans', written over a horizontal line.

Donald F. Evans
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CERTIFICATE OF SERVICE

I, Susan Travis, do hereby certify that copies of the foregoing Opposition of MCI Telecommunications Corporation to Petition for Rulemaking were sent via first class mail, postage paid, to the following on this 2nd day of September 1993:



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